

**ENTERED**

February 14, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**WFG NATIONAL TITLE INSURANCE §  
COMPANY, §**

**Plaintiff, §**

**VS. §**

**CIVIL ACTION NO. 4:18-CV-00368**

**KAVAC HOLDING COMPANY, LLC, §  
*et al*, §**

**Defendants. §**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

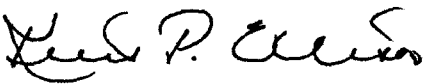
Pending before the Court is Defendant George M. Lee's Motion to Dismiss (Doc. No 14); Plaintiff WFG National Title Insurance Company's Motion for Default Judgment against Defendants Terry Fisher and Kavac Holding Company, LLC (Doc. No. 18); and Fisher and Kavac Holding Company's Motion to Dismiss (Doc. No. 22) and Supplemental Motion to Dismiss (Doc. No. 31) which had been referred to Magistrate Judge Dena Hanovice Palermo for a report and recommendation. On January 22, 2019, Judge Palermo issued the Report and Recommendation on Plaintiff's Motion to Remand (Doc. No. 40), recommending that Plaintiff's motion for entry of default be denied and that Defendants' motions to dismiss be granted in part and denied in part. The time for filing objections has passed, and no objections were filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error. Finding no clear error, the Court adopts *the Report and Recommendation* in its entirety. Accordingly, Plaintiff's Motion for Default Judgment against Defendants Terry Fisher and Kavac Holding Company, LLC (Doc. No. 18) is hereby **DENIED**. Defendants' motions to dismiss are **GRANTED IN PART AND DENIED IN PART** as follows:

- 1) The portion of WFG's declaratory judgment claim requesting relief on equitable subrogation grounds is hereby **DISMISSED WITHOUT PREJUDICE**. The remainder of WFG's declaratory judgment claim is not dismissed.
- 2) WFG's claims for common-law fraud, fraud in a real estate transaction, violation of the Texas Uniform Fraudulent Transfer Act, and breach of contract are hereby **DISMISSED WITHOUT PREJUDICE**.
- 3) WFG's claim for wrongful foreclosure is **DISMISSED WITHOUT PREJUDICE** as to Defendants Kavac and Fisher.
- 4) Defendant Lee's Motion to Dismiss is hereby **DENIED** in all other respects. Defendants Kavac and Fisher's Motion to Dismiss and Supplemental Motion to Dismiss is hereby **DENIED** in all other respects.

**IT IS SO ORDERED.**

**SIGNED** at Houston, Texas, on this the 14th day of February, 2019.

  
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KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE